

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS  
Title 3, California Code of Regulations  
Section 3424, *Bactrocera zonata* Interior Quarantine

INITIAL STATEMENT OF REASONS/  
POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

These regulations are intended to address the obligation of the Secretary of Food and Agriculture to protect the agricultural industry of California from the movement and spread within California of injurious plant pests.

Specific Purpose and Factual Basis

The specific purpose of Section 3424 is to provide for the State to regulate the movement and possible carriers of *Bactrocera zonata*, the peach fruit fly, from the area under quarantine to prevent the artificial spread of the fly to noninfested areas to protect California's agricultural industry.

The factual basis for the determination by the Department that the emergency amendment of Section 3424 is necessary is as follows:

Peach fruit fly, *Bactrocera zonata*, is an insect pest which attacks the fruit of various plants including apple, peach, pear, tomato and citrus. The female punctures host fruit to lay eggs which develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. Pupae may be found in fruit, but normally are found in soil.

Adult peach fruit flies were trapped in Fresno County. On May 15, 2006, an adult male peach fruit fly was taken from a trap in the Fresno area of Fresno County. On May

17, 2006, another adult male peach fruit fly was taken from a trap in the Fresno area. On May 18, 2006, two more male adults were taken from traps in the Fresno area. On May 19 and May 20, 2006, one adult male was taken from two separate traps in the Fresno area. The multiple finds of the fly meet the State's and national and international standards that are indicative of an incipient infestation of the fly which requires an emergency quarantine response in the Fresno area of Fresno County.

The Department previously made an emergency amendment to our existing Section 3591.12, Peach Fruit Fly Eradication Area, to include Fresno County in the regulation and that amendment was effective May 18, 2006. The Department's action plan for these types of fruit flies in a commercial agricultural production area requires a quarantine response upon the detection of more than five adult flies within three miles of each other and within a time period equal to one life cycle of the fly. The United States Department of Agriculture's Animal and Plant Health Inspection Service and the Food and Agriculture Organization of the United Nations also accept this standard as the trigger for a quarantine response.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

The emergency adoption of this regulation established a quarantine area in Fresno and Madera counties consisting of approximately 106 square miles surrounding the peach fruit fly infestation in the Fresno area of Fresno and Madera counties. To prevent the artificial spread of the fly to noninfested areas in order to protect the California's agricultural industry, it was immediately necessary to regulate movement of hosts which can carry the fly within and from the infested area and surrounding buffer zone. Therefore, it was necessary to adopt Section 3424 on an emergency basis.

The proposed quarantine area for Fresno includes the initial detection sites as the epicenter and a buffer zone which extends approximately 4-1/2 miles in each direction from the

epicenter. A buffer zone is necessary because the fly can spread naturally (as well as being spread artificially in infested hosts). The proposed boundary line was drawn jointly by the United States Department of Agriculture, the California Department of Food and Agriculture, and the Fresno and Madera county agricultural commissioners. The proposed quarantine area is considered the minimum area around the initial detection sites which should be regulated to prevent artificial spread of peach fruit fly to noninfested areas.

The immediate implementation of this proposed regulatory action was necessary to prevent the USDA, APHIS from considering the entire state as infested with peach fruit fly, rather than just the current area of Fresno and Madera counties. If this were to occur, there would likely be additional detrimental quarantine requirements directed against California host commodities by the USDA, APHIS and our international trade partners.

These facts and circumstances clearly indicate that the spread of peach fruit fly presents a clear and imminent danger to property and, therefore, constitutes an emergency. The Department was therefore compelled to take immediate action to mitigate the damage to property and preserve the general welfare.

The adoption of Section 3424, subsection (a), established peach fruit fly, *Bactrocera zonata*, as the quarantine pest of concern. The effect of the adoption of this subsection is to enable the enforcement of quarantine restrictions against the peach fruit fly.

The adoption of Section 3424, subsection (b), established the area surrounding the Fresno area of Fresno County as the area under quarantine. The effect of the adoption of this subsection is to enable the enforcement of quarantine restrictions against the articles and commodities covered into, within and from this area.

The adoption of Section 3424, subsection (c), established the articles and commodities covered. The effect of the adoption of this subsection is to enable the enforcement of

quarantine restrictions against the covered articles and commodities.

The adoption of Section 3424, subsection (d), established the restrictions governing the movement of the articles and commodities covered into, within and from the quarantine area. The effect of the adoption of this subsection is to enable the enforcement of these quarantine restrictions as applicable to the articles and commodities covered.

The overall effect of this regulation is to provide authority for the State and commissioners to perform quarantine activities against *Bactrocera zonata* in Fresno and Madera counties. To prevent spread of the fly to noninfested areas to protect California's agricultural industry, it was necessary to immediately begin quarantine response activities against the fly. Therefore, it was necessary to adopt this regulation as an emergency action.

#### Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3424 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Fresno and Madera county agricultural commissioners requested the change in the regulations.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The statewide cost impact of the changes in the regulations on private persons or businesses is not expected to be significantly adverse. The cost impacts on some private

persons or businesses may be significantly adverse if they are producing host commodities within the regulated area.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on the following:

Within the quarantine area, the Department has identified 56 fruit sellers/vendors. These businesses must maintain quarantine commodities in a manner that precludes exposure to peach fruit fly. Approved safeguards include maintaining the commodities indoors, in coolers, in plastic bags, enclosed behind window screen, or covered with fine mesh or plastic. All of these methods are very inexpensive. These businesses may experience a reduction in sales and reduced shelf life of the commodities. Neither of these reductions would represent a significant economic impact.

The Department has identified approximately 56 conventional growers within the quarantine area. Host fruit from growers outside the core area (a one mile area surrounding the infested sites) must be treated with malathion bait spray before it can be moved. Spray costs are approximately \$25 per acre with 10 required applications. Spray applications may be made by a commercial applicator or by the growers. Growers routinely spray for other plant pests so the additional applications would not be a significant expense. Growers located within the core area only have the quarantine treatment options of cold treatment, fumigation or processing for host material. Host material produced in the core area is considered to be a higher risk due to its proximity to the known infested sites. Fumigation costs are approximately \$0.015 per pound of product. The costs for cold treatment are unknown at this time.

The Department has not identified any organic growers with host commodities. However, ground spray costs with an "organic" pesticide are approximately \$10 per acre with 10 required applications. Spray applications may be made by a commercial applicator or by the growers. Growers routinely spray for other plant pests so the additional applications

would not be a significant expense. Organic growers located within the core area only have the quarantine treatment options of cold treatment or processing for host material. Host material produced in the core area is considered to be a higher risk due to its proximity to the known infested sites. The costs for cold treatment are unknown at this time.

The Department has identified approximately 15 fruit haulers, five packers and two processors and it is estimated that the additional costs for each of these businesses may be approximately \$200. Businesses transporting or receiving host produce must maintain the quarantine commodities in a manner that precludes exposure to peach fruit fly. Approved safeguards include maintaining the commodities in refrigerated coolers, in plastic bags, or covered with fine mesh or plastic. All of these methods are very inexpensive.

There are 11 nurseries in the area under quarantine that must treat the soil of host plants and strip the fruit of host plants before they may be moved from or within the area under quarantine. The required treatment is a soil drench with diazinon. This treatment does not have to be repeated if the fruit is kept stripped from the plants. The cost of the treatment is low and existing nursery personnel perform the treatment and fruit stripping. The fruit is placed in plastic bags for landfill disposal. The plastic bags are inexpensive and the extra material for landfill disposal does not add appreciably to their existing disposal costs.

The Department has identified approximately 21 farmers' markets/swap meets in the area under quarantine. Businesses selling host produce at these locations must maintain the quarantine commodities in a manner that precludes exposure to peach fruit fly. Approved safeguards include maintaining the commodities in coolers, in plastic bags, or covered with fine mesh or plastic. All of these methods are very inexpensive. These businesses may experience a reduction in sales and reduced shelf life of the commodities. Neither of these reductions would represent a significant economic impact.

No business has gone out of business due to the quarantine. Many businesses have benefited from the sales of safeguarding materials and others have benefited from peach fruit fly expenditures by State and Federal governments.

Based on the above information, it was determined that the amendment of Section 3424 will not have a significant adverse economic impact on businesses. All costs associated with compliance with the regulation are low and, for the most part, a number of optional ways to comply are available to businesses so they may select the means with the lowest cost and easiest implementation for them. For many businesses, no additional costs were incurred.

### Assessment

The Department has made an assessment that the amendment to this regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

### Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### Information Relied Upon

The Department is relying upon the following studies, reports, and documents in the amendment of Section 3424:

“Annual Fruit Fly Quarantine Cost Basis,” California Department of Food and Agriculture, Plant Health and Pest Prevention Services, Permits and Regulations, June 27, 2006.

“Annual Estimated Economic Impact – Fresno Area, Fresno County, *Bactrocera zonata* Interior Quarantine,” California Department of Food and Agriculture, Plant Health and Pest Prevention Services, Permits and Regulations, June 26, 2006.

Email of June 23, 2006, from Casey Estep to NCondos and its attachment, “Fresno *Bactrocera zonata* Project.”

Facsimile transmission of June 17, 2006, from Abel C. Valenzuela to Nick Condos, including the cover sheet and the 19 pages that list growers and commodities.

Letter of May 23, 2006 to A.G. Kawamura from Jerry Prieto, Jr.

Letter of May 22, 2006 to A.G. Kawamura from Robert J. Rolan.

"Pest and Damage Record #1336577," dated May 20, 2006, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

"Pest and Damage Record #1336778," dated May 19, 2006, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

"Pest and Damage Record #1417657," dated May 18, 2006, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

"Pest and Damage Record #1336971," dated May 18, 2006, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

"Pest and Damage Record #1374643," dated May 17, 2006, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

"Pest and Damage Record #1417655," dated May 15, 2006, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

"Action Plan, Peach Fruit Fly, *Bactrocera zonata* (Saunders)," May 2000, Food & Agricultural Organisation, International Atomic Energy Agency (50 pages).

"Action Plan for Methyl Eugenol Attracted Fruit Flies, Including the Oriental Fruit Fly, *Bactrocera dorsalis* (Henel)," Revised April 2000, California Department of Food and Agriculture, Plant Health and Pest Prevention Services (ten pages).